



DEPARTMENT OF LAW  
OFFICE OF THE  
Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

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ATTORNEY GENERAL

November 21, 1977

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ARIZONA ATTORNEY GENERAL

Mr. Jody N. Klein  
Deputy Cochise County Attorney  
P. O. Drawer CA  
Bisbee, Arizona 85603

Re: 77-227 (R77-310)

Dear Mr. Klein:

We concur in the conclusion reached by your September 15, 1977 opinion addressed to Ms. Virginia Eastridge at Pearce Elementary School District No. 22, that it is mandatory to establish and charge a rental fee for community groups and organizations to use school buildings under the recent amendment to A.R.S. §15-451. See also A.R.S. §15-442(B)(12) and the authority cited in the Navajo County Attorney's opinion with which we informally concurred in Atty.Gen.Op. No. 77-123 (R77-183).

Sincerely,

BRUCE E. BABBITT  
Attorney General

DAVID RICH  
Assistant Attorney General

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September 15, 1977

*Opinion Request*  
*R77-310*

Virginia Eastridge  
Pearce Elementary School District 22  
Drawer 127  
Pearce, Arizona 85625

Dear Mrs. Eastridge:

1. Is it mandatory to establish and charge a rental fee for community groups and organizations to use school buildings under new House Bill 2053?

We believe that the recent amendment to A.R.S. §15-451 (House Bill 2053) does not permit the free use of school buildings and property by community organizations. While amended A.R.S. §15-442(A) provides that "[t]he board of trustees may lease or rent or permit the use of school buildings, grounds, buses, equipment and other school property . . . ", this does not permit the board to do so gratuitously. There are two reasons for this conclusion: First, the wording "permit the use of" was present under former A.R.S. §15-451(A). The amendment merely elaborated ways in which the property could be used by community groups; that is, by lease or rental. These are not the exclusive methods; however, nowhere does the statute authorize the school district to fund such activities. See Attorney General Op. 77-123, even though it is not intended to have precedential value. The second reason is even more compelling. To interpret the amended statute as allowing the gratuitous use of school property would contravene Article 9, Section 7 of the Constitution which forbids the grant or gift of public monies. While the obvious intent of the statute is to make such facilities accessible to worthwhile public groups, it must be done without expense to the school or school district. We therefore conclude that A.R.S. §15-451 was amended for the purpose of clarifying (1) who was eligible to use school facilities, (2) what properties and facilities could be used, and (3) what arrangements could be made for their use.

2. If such fees are mandatory, on what basis should these fees be computed?

New statute A.R.S. §15-451 states that "[p]ayments under such lease or rental shall be sufficient to pay all costs

Virginia Eastridge  
Pearce Elementary School District 22  
September 15, 1977  
Page Two

incurred by the board, damage, depreciation in value and an amount to provide adequate liability insurance for the district which shall be purchased by the board." It will be the duty of the board to make a reasonable determination of the total costs which must be reimbursed to the district. The measure of fees should be actual cost, not fair market value or fair rental value. The intent of the legislature was to make school property and facilities available to worthwhile community groups, not to authorize the school district to engage in a money-making enterprise. Thus, the school district should develop a fee schedule which allows it to break even. This will also serve the purpose of insuring that no community group obtains preferential financial treatment. Determination of a fee schedule may well involve some discretion as it may be difficult to determine the actual cost down to the penny. Obviously, discretion will be involved when the consideration received by the district is other than monetary (e.g. use of community facilities for school purposes).

I hope this letter will adequately answer your questions. A copy is being forwarded to the Office of the Attorney General for review pursuant to A.R.S. §15-122(B).

Very truly yours,

BEVERLY H. JENNEY  
Cochise County Attorney

By: *[Signature]* N. Klein  
GODYON. KLEIN  
Deputy County Attorney

JNK/cfh

✓ cc: Attorney General  
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